

AMENDED IN SENATE APRIL 17, 2006

AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1823**

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**Introduced by Senator Dunn**  
**(Coauthor: Senator Perata)**

February 24, 2006

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An act to amend and repeal Section 1371.37 of, and to add Sections 1348.1 and 1348.2 to, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1823, as amended, Dunn. Health care service plans: claim reimbursements.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (the Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. The Knox-Keene Act prohibits a health care service plan from engaging in an unfair payment pattern, as defined, and authorizes the department to investigate whether a plan has engaged in such a practice and to impose a penalty for that conduct. The Knox-Keene Act requires the department to make available information regarding actions it has taken pursuant to these provisions. *The Knox-Keene Act regulates the terms of a contract between a plan and or risk-bearing organization, as defined.*

This bill would additionally prohibit a ~~medical group~~ *risk-bearing organization* having responsibility to pay a provider claim from engaging in an unfair payment pattern. The bill would require the department to investigate, in specified circumstances, complaints by

noncontracting physicians and surgeons who furnished emergency services and care and ~~would prohibit, on and after July 1, 2007, would require the department from exempting a plan or medical group from to use a publicly available database to determine whether the payment methodology of a plan or risk-bearing organization constitutes an unfair payment pattern violation by approving a proprietary database.~~ The bill would require the department to develop a “fast-track” process for resolving a payment practice it previously found unfair and to assess a plan or ~~medical group risk-bearing organization~~ that engaged in that same practice a fine 3 times the amount by which the provider was underpaid. The bill would also require a plan or ~~medical group risk-bearing organization~~ to make restitution automatically, except as specified, to a provider for the amount by which the provider was underpaid and ~~would specify that any to pay a monetary penalty assessed against a plan or medical group equal to at least that amount.~~ The bill would ~~require the department to report to the Legislature any investigations of unfair payment patterns that were not completed within 6 months of the complaint’s submission and would specify information the department is required to provide the public and providers concerning complaints of unfair payment patterns.~~

Because the bill would specify additional requirements under the Knox-Keene Act, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1348.1 is added to the Health and
- 2 Safety Code, to read:
- 3 1348.1. The department shall make available to the public
- 4 and providers information obtained through the process described
- 5 in Section 1371.37, including, but not limited to, the following:

1 (a) A list of current complaints, updated monthly, with the  
2 following data for each complaint:

3 (1) The name of the provider submitting the complaint.

4 (2) The date the complaint was submitted.

5 (3) The name of the health care service plan or ~~medical group~~  
6 *risk-bearing organization* having responsibility for paying the  
7 claim that is the subject of the complaint.

8 (4) The type of complaint.

9 (5) A description of actions taken, if any, by the department in  
10 reviewing, investigating, and taking enforcement action with  
11 regard to the complaint and the date each action was taken.

12 (b) A list of current complaints, updated monthly, categorized  
13 by the health care service plan or ~~medical group~~ *risk-bearing*  
14 *organization* with responsibility for paying the claim and by the  
15 type of complaint.

16 (c) A list of resolved or dismissed complaints, updated  
17 monthly, including the data described in subdivision (a).

18 (d) *A list of investigations, updated monthly, that are*  
19 *unresolved.*

20 SEC. 2. Section 1348.2 is added to the Health and Safety  
21 Code, to read:

22 1348.2. (a) The department shall develop a fast-track process  
23 for resolving a complaint regarding a payment action that it has  
24 previously found to be unfair pursuant to Section 1371.37.

25 (b) Within 30 *business* days of receipt of a complaint, the  
26 department shall determine if it has previously found the  
27 payment action by the same ~~or another~~ health care service plan or  
28 ~~medical group~~ *risk-bearing organization* to be unfair.

29 (c) Notwithstanding any other provision of law, if the  
30 department has made the prior finding described in subdivision  
31 (b), it shall assess a fine against the plan or ~~medical group~~  
32 *risk-bearing organization* in an amount that is three times the  
33 amount by which the provider was underpaid.

34 (d) The plan or ~~medical group~~ *risk-bearing organization* shall  
35 pay the fine to the department within 30 *business* days of the  
36 ~~department~~ *department's* determination, or it may within that  
37 same timeframe, request a hearing before the director pursuant to  
38 Section 1397.

39 (e) One-half of the fine amount shall be retained by the  
40 department and deposited into the Managed Care Fund, and

1 *within 30 business days, the department shall pay one-half of the*  
2 *fine amount shall be paid to the provider that submitted the*  
3 *complaint. The plan or risk-bearing organization shall also make*  
4 *restitution of the underpayment as required by Section 1371.37.*

5 SEC. 3. Section 1371.37 of the Health and Safety Code, as  
6 added by Section 6 of Chapter 827 of the Statutes of 2000, is  
7 amended to read:

8 1371.37. (a) A health care service plan and a ~~medical group~~  
9 *risk-bearing organization* with responsibility to pay a provider  
10 claim are prohibited from engaging in an unfair payment pattern,  
11 as defined in this section.

12 (b) (1) Consistent with subdivision (a) of Section 1371.39, the  
13 director may investigate a health care service plan or a ~~medical~~  
14 ~~group~~ *risk-bearing organization* to determine whether it has  
15 engaged in an unfair payment pattern.

16 (2) When the number of complaints against a plan or ~~medical~~  
17 ~~group~~ *risk-bearing organization* with responsibility for paying  
18 claims that were submitted by noncontracting physicians and  
19 surgeons for emergency services and care is 15 or more for a  
20 similar payment action, the department shall open an  
21 investigation. For the purposes of this paragraph, a complaint is a  
22 single payment action taken on claims submitted by  
23 noncontracting physicians and surgeons for emergency services  
24 and care.

25 ~~(3) The department shall report to the budget committees of~~  
26 ~~the Legislature any investigations that were not completed within~~  
27 ~~six months from the date of the submission of the complaint,~~  
28 ~~including an explanation of the reasons for the delay in~~  
29 ~~completing the investigation and resolution of the complaint.~~

30 ~~(4)~~

31 (3) On and after July 1, 2007, the department shall ~~not~~  
32 ~~approve, for the purpose of exempting a health care service plan~~  
33 ~~or medical group from an unfair payment pattern violation, any~~  
34 ~~proprietary database. For this purpose, the department shall only~~  
35 ~~approve a database that is available to the public and is verified~~  
36 ~~by the department as statistically credible. Prior to use a publicly~~  
37 ~~available database for purposes of determining whether the~~  
38 ~~payment methodology of a health care plan or a risk-bearing~~  
39 ~~organization constitutes an unfair payment pattern. Prior to~~  
40 ~~approving any publicly available database, the department shall~~

1 provide a 30-day notice and solicit comments from the public  
2 and interested organizations. The public notice shall include the  
3 department's analysis of the credibility of the database.

4 (c) An "unfair payment pattern," as used in this section, means  
5 any of the following:

6 (1) Engaging in a demonstrable and unjust pattern, as defined  
7 by the department, of reviewing or processing complete and  
8 accurate claims that results in payment delays.

9 (2) Engaging in a demonstrable and unjust pattern, as defined  
10 by the department, of reducing the amount of payment or  
11 denying complete and accurate claims.

12 (3) Failing on a repeated basis to pay the uncontested portions  
13 of a claim within the timeframes specified in Section 1371,  
14 1371.1, or 1371.35.

15 (4) Failing on a repeated basis to automatically include the  
16 interest due on claims pursuant to Section 1371.

17 (d) (1) Upon a final determination by the director that a  
18 health care service plan or a ~~medical-group~~ *risk-bearing*  
19 *organization* has engaged in an unfair payment pattern, the  
20 director shall ~~require~~ *take both of the following actions:*

21 (A) *Require* the health care service plan or ~~medical-group~~  
22 *risk-bearing organization* to make restitution to the provider of  
23 all amounts by which it underpaid the provider. The plan or  
24 ~~medical-group~~ *risk-bearing organization* shall make restitution  
25 automatically, and the provider shall not be required to resubmit  
26 a claim to the plan or ~~medical-group~~ *risk-bearing organization*.

27 (B) *Impose monetary penalties as permitted by this chapter in*  
28 *an amount that, at minimum, equals the total amount by which*  
29 *the provider was underpaid.*

30 (2) Notwithstanding paragraph (1), if the director makes a  
31 finding that an extraordinary circumstance exists, the director  
32 may require the provider to resubmit a claim, and the director  
33 shall require the plan or ~~medical-group~~ *risk-bearing organization*  
34 to add to the restitution amount a reasonable amount to reimburse  
35 the provider for the costs of resubmitting the claim.

36 (e) (1) In addition to the remedy required by subdivision (d),  
37 the director may take ~~any~~ *either* of the following actions upon his  
38 or her final determination that a health care service plan or a  
39 ~~medical-group~~ *risk-bearing organization* has engaged in an  
40 unfair payment pattern:

1     ~~(A) Impose monetary penalties as permitted under this chapter~~  
2     ~~in an amount that, at minimum, equals the total amount by which~~  
3     ~~the provider was underpaid.~~

4     ~~(B)~~

5     (A) Require the health care service plan or ~~medical group~~  
6     *risk-bearing organization* for a period of three years from the  
7     date of the director's determination, or for a shorter period  
8     prescribed by the director, to pay complete and accurate claims  
9     from the provider within a shorter period of time than that  
10    required by Section 1371. The provisions of this subparagraph  
11    shall not become operative until January 1, 2002.

12    ~~(C)~~

13    (B) Include a claim for costs incurred by the department in any  
14    administrative or judicial action, including investigative expenses  
15    and the cost to monitor compliance by the plan or the ~~medical~~  
16    ~~group~~ *risk-bearing organization*.

17    (2) For any overpayment made by a health care service plan or  
18    a ~~medical group~~ *risk-bearing organization* while subject to the  
19    provisions of paragraph (1), the provider shall remain liable to  
20    the plan or ~~medical group~~ *risk-bearing organization* for  
21    repayment pursuant to Section 1371.1.

22    (f) The enforcement remedies provided in this section are not  
23    exclusive and shall not limit or preclude the use of any otherwise  
24    available criminal, civil, or administrative remedy.

25    (g) The penalties set forth in this section shall not preclude,  
26    suspend, affect, or impact any other duty, right, responsibility, or  
27    obligation under a statute or under a contract between a health  
28    care service plan or a ~~medical group~~ *risk-bearing organization*  
29    and a provider.

30    (h) A health care service plan may not delegate any statutory  
31    liability under this section.

32    (i) For the purposes of this section, "complete and accurate  
33    claim" has the same meaning as that provided in the regulations  
34    adopted by the department pursuant to subdivision (a) of Section  
35    1371.38.

36    (j) On or before December 31, 2001, the department shall  
37    report to the Legislature and the Governor information regarding  
38    the development of the definition of "unjust pattern" as used in  
39    this section. This report shall include, but not be limited to, a  
40    description of the process used and a list of the parties involved

1 in the department's development of this definition as well as  
2 recommendations for statutory adoption.

3 SEC. 4. Section 1371.37 of the Health and Safety Code, as  
4 added by Section 6 of Chapter 825 of the Statutes of 2000, is  
5 repealed.

6 SEC. 5. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the  
11 penalty for a crime or infraction, within the meaning of Section  
12 17556 of the Government Code, or changes the definition of a  
13 crime within the meaning of Section 6 of Article XIII B of the  
14 California Constitution.